

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FREDDY ADAN GRACIA,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. 1:24-cv-00441-KES-BAM

**ORDER TO SHOW CAUSE WHY ACTION
SHOULD NOT BE DISMISSED FOR
FAILURE TO PROSECUTE**

FOURTEEN-DAY DEADLINE

Plaintiff Freddy Adan Gracia (“Plaintiff”) seeks review of the Commissioner of Social Security’s denial of his applications for disability benefits. (Doc. 1.) Plaintiff initiated this action on April 12, 2024, and filed an application to proceed *in forma pauperis* under 28 U.S.C. § 1915. (Docs. 1, 2.) On April 15, 2024, the Court issued findings and recommendations that recommended Plaintiff’s application for leave to proceed *in forma pauperis* be denied and Plaintiff be required to pay the \$405.00 filing fee in full to proceed with this action. (Doc. 4.)

While the findings and recommendations remained pending, and prior to the Court issuing a scheduling order, the Commissioner of Social Security filed the administrative record. (Doc. 6.)

On July 10, 2024, the Court granted the parties’ stipulation allowing Plaintiff an extension of time to July 19, 2024, to file an opening brief. (Doc. 8.) Subsequently, on July 18,

2024, Plaintiff filed a request for leave to file a motion for summary judgment in excess of twenty-five (25) pages. (Doc. 9.)

On July 19, 2024, the Court issued a minute order informing the parties that the July 10, 2024 order granting Plaintiff an extension of time to serve his opening brief was issued in error. (Doc. 11.) The Court noted that Plaintiff's application for leave to proceed *in forma pauperis*, along with findings and recommendations recommending that the application be denied, remained pending in the action. Because no scheduling order had been issued, no opening brief was due. (*Id.*) Concurrently, the Court denied Plaintiff's request for leave to file a motion for summary judgment greater than 25 pages without prejudice. The Court reiterated that no opening brief (or motion for summary judgment) was due. (Doc. 12.)

On July 22, 2024, Plaintiff paid the \$405.00 filing fee in full. Accordingly, on July 24, 2024, the Court vacated the pending findings and recommendations, and denied Plaintiff's application to proceed *in forma pauperis* as moot. (Doc. 13.)

On July 25, 2024, more than seven months ago, the Court issued summons and a Scheduling Order. (Docs. 14, 15.) On the same date, the Court electronically served the Commissioner with the complaint, summons, and new case documents. (Doc. 16.)

To date, Plaintiff has not filed a motion for summary judgment or taken any action to prosecute this case despite the administrative record previously having been filed. The Court recognizes the procedural irregularity presented here—the payment of the filing fee and issuance of the Scheduling Order *after* the filing of the administrative record—but that irregularity did not otherwise relieve Plaintiff of his obligation to prosecute this action in a timely manner. If Plaintiff was unclear or confused regarding the deadlines in this action, then he could have met and conferred with the Commissioner's counsel on a stipulated briefing schedule or requested clarification from the Court.

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1 Accordingly, Plaintiff is HEREBY ORDERED to SHOW CAUSE why this action should
2 not be dismissed for his failure to prosecute. Plaintiff may comply with this order by filing a
3 written response (or a motion for summary judgment) within **fourteen (14) days from the date**
4 **of this order. Failure to comply with this order will result in a recommendation for**
5 **dismissal.**

6
7 IT IS SO ORDERED.

8 Dated: March 11, 2025

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE